

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LING CAI, individually; SING XU,
individually; ZHIYUAN XU, a minor, by
and through his Natural Parent, JING
XU; JENNIFER EDWARDS as Special
Administrator of the ESTATE OF
ZHONGPING ZHOU, deceased;,

Plaintiffs,

v.

ENTERPRISE LEASING COMPANY-
WEST LLC dba ENTERPRISE/ELCO;
ENTERPRISE LEASING COMPANY-
WEST LLC dba ALAMO; ELCO
ADMINISTRATIVE SERVICES
COMPANY; ACE AMERICAN
INSURANCE COMPANY; ESIS INC, dba
CHUBB NORTH AMERICAN CLAIMS;
CHUBB SERVICES CORPORATION dba
CHUBB NORTH AMERICAN CLAIMS;
CHUBB NATIONAL INSURANCE
COMPANY; AND CHUBB INDEMNITY
INSURANCE COMPANY; DOES I
through X, inclusive; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No. 2:23-cv-00050-ART-NJK

ORDER

This is a removal action concerning automobile insurance. Before the Court are: 1) ACE Defendants' Motion to Dismiss (ECF No. 4); 2) Enterprise Defendants' Motion to Dismiss (ECF No. 6); 3) Plaintiffs' Motion to File a Second Amended Complaint (ECF No. 16); and 4) Enterprise Defendants' Motion to File a Surreply in Support of Their Opposition to Plaintiffs' Motion to File a Second Amended Complaint (ECF No. 28). For the reasons set forth in this order, Plaintiff's Motion to File a Second Amended Complaint, (ECF No. 16), is granted, Defendants' Motions to Dismiss are denied without prejudice (ECF Nos. 4 and 6), and Enterprise Defendants' Motion to File a Surreply, (ECF No. 28), is denied as moot.

1 **I. BACKGROUND**

2 Plaintiffs' actions arose from a motor vehicle accident allegedly caused by
3 Jiaoping Xu ("Jiaoping") making an unsafe left-hand turn into traffic on Highway
4 160 in Las Vegas, Nevada on October 10, 2015. (ECF No. 1-1, at ¶¶ 9, 17-19).
5 Plaintiffs were the other passengers in the car; Zhongping Zhou ("Zhongping"),
6 Jiaoping's wife, died in the accident, and the other Plaintiffs received severe
7 injuries. *Id.* at ¶ 17, 19. Plaintiffs include Ling Cai ("Ling"), Jiaoping's adult son,
8 Jing Xu ("Jing"), Ling's wife and mother of Zhiyuan Xu, a minor, Zhiyuan Xu
9 (Zhiyuan), and Jennifer Edwards, Special Administrator of Zhongping's Estate.
10 *Id.* at ¶¶ 2-5. At the time of the accident, Jiaoping had been driving a rental
11 vehicle registered to the "Enterprise Defendants" (Enterprise Leasing Company-
12 West LLC dba Enterprise/ELCO; Enterprise Leasing Company-West LLC dba
13 Alamo; and Elco Administrative Services Company) and insured through an
14 Extended Protection insurance policy underwritten and managed by "ACE
15 Defendants" (ACE America Insurance Company; ESIS Inc., dba Chubb North
16 American Claims; Chubb Services Corporation dba Chubb North American
17 Claims; Chubb National Insurance Company; and Chubb Indemnity Insurance
18 Company). *Id.* at ¶¶ 17, 20-23. On October 12, 2016, and December 14, 2016,
19 Chubb "denied and disclaimed the policy due to language in the policy which
20 excluded coverage to any person who is related to any insurer by blood, marriage,
21 or adoption and residing in the same household." *Id.* at ¶¶ 26-27, 30.

22 Plaintiffs sued Jiaoping in 2017 for negligence and received a default
23 judgment in 2021, which included judicial assignment of Jiaoping's legal rights
24 against the Enterprise Defendants and ACE Defendants. *Id.* at ¶¶ 31-34, 36-37,
25 40-41). Plaintiffs filed this action in the Eighth Judicial District Court of Clark
26 County, Nevada before the Enterprise Defendants removed it to federal court.
27 (ECF No. 1.)

28 After ACE Defendants and Enterprise Defendants moved to dismiss (ECF

Nos. 4 and 6, respectively), Plaintiffs simultaneously opposed Defendants' motions (ECF No. 15) and moved for leave to file a second amended complaint (ECF No. 16). In the Second Amended Complaint ("SAC"), Plaintiffs added two claims, including third-party beneficiary claims and a declaratory judgment claim, and related factual allegations. (ECF No. 15 at 10-11; ECF No. 16). Defendants opposed the amendment (ECF Nos. 22, 23) and Enterprise Defendants subsequently moved to file a surreply (ECF No. 28), to which Plaintiffs objected, (ECF No. 29).

II. DISCUSSION

Although Defendants oppose Plaintiffs' request for leave to file a Second Amended Complaint ("SAC"), there is a strong policy favoring granting leave to amend and amendment appears to be justified here. Rule 15(a)(2) of the Federal Rules of Civil Procedure dictates that in ruling on pre-trial amendments district courts "should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). This policy favoring amendment is "to be applied with extreme liberality." *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003). Courts should grant requests to make amendments "subject to the qualification that the amendment no cause undue prejudice to the defendant, is not sought in bad faith, and is not futile." *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999) (citing *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987)). An amendment is futile "only if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense." *Barahona v. Union Pac. R.R. Co.*, 881 F.3d 1122, 1134 (9th Cir. 2018).

ACE Defendants argue that Plaintiffs' motion should be denied because they violated Nevada Local Rule 7-2 (LR 7-2(a)) by incorporating instead of stating arguments made in their simultaneously filed Opposition to Defendants' Motion to Dismiss. (ECF No. 23, at 2-3.) Plaintiffs' Motion for Leave to Amend did not violate LR 7-2(a), which simply requires parties to support motions with "a

1 memorandum of points and authorities” and to combine the motion and
2 supporting memorandum “into a single document,” but does not prohibit
3 incorporation of arguments made in other pleadings. Plaintiffs’ motion attached
4 the SAC and specifically identified the portion of their brief detailing the standard
5 for amendment and their reasons with legal support for adding third-party
6 beneficiary and declaratory relief claims. (ECF Nos. 15 and 16.)

7 Defendants also argue that Plaintiffs new claims for third-party beneficiary
8 and declaratory relief are “futile” but fail to meet the high standard for disallowing
9 amendment. Enterprise Defendants argue the claims are futile because 1) they
10 are time-barred; 2) the Plaintiffs lack standing to assert third-party beneficiary
11 claims; and 3) declaratory judgment is not an independent cause of action. (ECF
12 No. 22, at 5-8). ACE Defendants make the same argument on declaratory
13 judgments (ECF No. 23, at 3-4.) Plaintiffs have sufficiently articulated why their
14 claims are valid and Defendants’ points, which can be addressed by dispositive
15 motions, fail to show that Plaintiffs added claims are futile.

16 Because Plaintiffs have alleged potentially “valid and sufficient” claims and
17 absent any concern about undue prejudice or bad faith, the Court grants
18 Plaintiffs leave to file a second amended complaint.

19 **III. CONCLUSION**

20 For the reasons stated, Plaintiffs’ motion for leave to file a second amended
21 complaint, (ECF No. 16) is granted.

22 It is further ordered that, in light of the Court’s granting of Plaintiffs’
23 Motion for Leave to Amend, Defendants’ Motions to Dismiss (ECF Nos. 4, 6) are
24 denied without prejudice as moot with leave to refile.

25 Enterprise Defendants’ Motion to File a Surreply (ECF No. 28) is denied as
26 moot.

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1 DATED THIS 31st day of July 2023.

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5 ANNE R. TRAUM
6 UNITED STATES DISTRICT JUDGE
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